

conditions, and other provisions as are consistent with and will effectuate the purposes of section 504 and this part, including provisions designed to assure that no financial assistance to which this regulation applies will thereafter be extended to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive financial assistance upon satisfaction of the terms and conditions for such eligibility contained in that order, or if the recipient otherwise comes into compliance with this part and provides reasonable assurance of future full compliance with this part.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request that TVA fully restore the recipient's eligibility to receive financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a request for a hearing in writing, specifying its reasons for believing TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient, upon proving at such a hearing that the requirements of paragraph (g)(1) of this section are satisfied, will be restored to such eligibility. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[45 FR 22895, Apr. 4, 2003, as amended at 68 FR 51356, Aug. 26, 2003]

**§ 1307.13 Effect on other regulations; supervision and coordination.**

(a) *Effect on other regulations.* Nothing in this part shall be deemed to super-

sede or affect any of the following (including future amendments thereof): (1) Regulations by TVA and other Federal agencies issued with respect to section 503 of the Rehabilitation Act of 1973, or (2) any other regulations or instructions, insofar as they prohibit discrimination on the ground of handicap in any program or activity or situation to which this part is inapplicable, or which prohibit discrimination on any other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other Federal agencies, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of section 504 and this part (other than responsibility for final decision as provided in § 1307.12), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the government in the application of section 504 and this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another federal agency acting pursuant to an assignment of responsibility under this part shall have the same effect as though such action had been taken by TVA.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Apr. 26, 2003]

## PART 1308—CONTRACT DISPUTES

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- 1308.55 Penalties.

AUTHORITY: Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. 831-831dd; Contract Disputes Act of 1978, 92 Stat. 2383-2391.

SOURCE: 44 FR 29648, May 22, 1979, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

### Subpart A—General Matters

#### § 1308.1 Purpose and organization.

The regulations in this part implement the Contract Disputes Act of 1978 as it relates to TVA. This part consists of 5 subparts. Subpart A deals with matters applicable throughout the part, including definitions. Subpart B deals with Contracting Officers' decisions. Subpart C deals with general matters concerning the TVA Board of Contract Appeals. Subpart D deals with hearing and prehearing procedures, including discovery. Subpart E deals with subpoenas.

#### § 1308.2 Definitions.

For the purposes of this part, unless otherwise provided:

(a) The term *Act* means the Contract Disputes Act of 1978, 92 Stat. 2383-91.

(b) The term *Board* means the TVA Board of Contract Appeals.

(c) The term *claim* means a written demand by a Contractor, in compliance with this paragraph, for a decision by a Contracting Officer under a disputes clause. A claim must:

(1) State the amount of monetary relief, or the kind of nonmonetary relief, sought, and identify the contract provision relied upon;

(2) Include sufficient supporting data to permit the Contracting Officer to decide the claim, or provide appropriate reference to previously submitted data;

(3) If monetary relief totalling more than \$50,000 is involved, include a signed certification by the Contractor that the claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes TVA is liable;

(4) Be signed by the Contractor, or on its behalf if the Contractor is other than an individual. If signed on a Contractor's behalf, the claim must include evidence of the authority of the individual so signing it, and of the individual signing any certification required by this paragraph, unless such authority appears in the contract or contract file.

The Contracting Officer has no authority to waive any of the requirements of this paragraph.

(d) The term *contract* means an agreement in writing entered into by TVA for:

(1) The procurement of property, other than real property in being;

(2) The procurement of nonpersonal services;

(3) The procurement of construction, alteration, repair or maintenance of real property; or

(4) The disposal of personal property. The term "contract" does not include any TVA contract for the sale of fertilizer or electric power, or any TVA contract related to the conduct or operation of the electric power system.

(e) The term *Contracting Officer* means TVA's Director of Purchasing,

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or duly authorized representative acting within the limits of the representative's authority. The TVA Purchasing Agent who administers a contract for TVA is designated as the duly authorized representative of the Director of Purchasing to act as Contracting Officer for all purposes in the administration of the contract (including, without limitation, decision of claims under the disputes clause). Such a designation continues until it is revoked or modified by written notice to the Contractor and the Purchasing Agent from TVA's Director of Purchasing.

(f) The term *Contractor* means a party to a TVA contract which contains a disputes clause. The term "Contractor" does not include TVA.

(g) The term *disputes clause* means a clause in a TVA contract requiring that a contract dispute be resolved through a TVA-conducted administrative process. It does not include, for example, arbitration provisions, or provisions specifying an independent third party to decide certain kinds of matters or special mechanisms to establish prices or price adjustments in contracts.

(h) The term *Hearing Officer* means a member of the Board who has been designated to hear and determine a particular matter pending before the Board.

(i) The term *TVA* means the Tennessee Valley Authority.

(j) A term defined as in a contract subject to this part shall have the meaning given it in the contract.

### § 1308.3 Exclusions.

(a) This part does not apply to any TVA contract which does not contain a disputes clause.

(b) Except as otherwise specifically provided, this part does not apply to any TVA contract entered into prior to March 1, 1979, or to any dispute relating to such a contract.

### § 1308.4 Coverage of certain excluded Contractors.

(a) A Contractor whose contract is excluded from this part under §1308.3(b) may elect to proceed under this part and the Act with respect to any dispute pending before a Contracting Officer on March 1, 1979, or initiated thereafter. If

the disputes clause in the contract is not an "all disputes" clause (*see Patton Wrecking & Dem. Co. v. Tennessee Valley Authority*, 465 F.2d 1073 (5th Cir. 1972)), a Contractor's election under this section shall cause the provisions of the first two sentences of section 6(a) of the Act to apply to the contract, and such an election shall be irrevocable.

(b) A Contractor makes an election under paragraph (a) of this section by giving written notice to the Contracting Officer stating that the Contractor elects to proceed with the dispute under the Act. For disputes pending on March 1, 1979, the notice shall be actually received by the Contracting Officer within 30 days after the Contractor receives the Contracting Officer's decision. For disputes initiated thereafter, the notice shall be included in the document first requesting a decision by the Contracting Officer.

### § 1308.5 Interest.

TVA shall pay a Contractor interest on the amount found to be due on a claim:

(a) From the date payment is due under the contract or the Contracting Officer receives the claim, whichever is later, until TVA makes payment;

(b) At the rate payable pursuant to section 12 of the Act on the date from which interest runs pursuant to paragraph (a) of this section.

### § 1308.6 Fraudulent claims.

(a) If a Contractor is unable to support any part of a claim and it is determined that such inability is attributable to the Contractor's misrepresentation of fact or fraud, the Contractor shall be liable to TVA, as set out in section 5 of the Act, for:

(1) An amount equal to the unsupported part of the claim; plus

(2) All TVA's costs attributable to reviewing that part of the claim.

(b) The term "misrepresentation of fact" has the meaning given it in section 2(7) of the Act.

(c) Prior to TVA's filing suit for amounts due under this section, TVA shall provide the Contractor with a copy of any opinion under §1308.16 or §1308.37(b), and shall request the Contractor to pay voluntarily the amount TVA asserts is due to it.

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(d) A determination by TVA that fraud or misrepresentation of the fact has been committed is not subject to decision under a disputes clause.

(e) The provisions of this section are in addition to whatever penalties or remedies may otherwise be provided by law.

### **§ 1308.7 Effective date.**

Subject to §1308.3(a), this part applies to any TVA contract having an effective date on or after March 1, 1979.

## **Subpart B—Contracting Officers**

### **§ 1308.11 Contractor's request for relief.**

Any request for relief which a Contractor believes is due under a contract shall be submitted to the Contracting Officer in writing, in accordance with the terms of the contract, including applicable time limits.

### **§ 1308.12 Submission and decision of Contractor's claim.**

(a) If Contractor and TVA are unable to resolve Contractor's request for relief by agreement within a reasonable time, Contractor may submit a claim to the Contracting Officer.

(b) The Contracting Officer shall issue a decision to the Contractor on a submitted claim in conformity with the contract's disputes clause. Specific findings of fact are not required, but may be made. Such findings are not binding in any subsequent proceeding except as provided in §1308.15. The decision shall:

- (1) Be in writing;
- (2) State the reasons for the decision reached;
- (3) Include information about the Contractor's rights of appeal under sections 7 and 10 of the Act (including time limits); and
- (4) Notify the Contractor, as appropriate, of the special procedures available under §§1308.35 and 1308.36 at the Contractor's election. A copy of the provisions of this part shall be furnished with the decision.

### **§ 1308.13 Time limits for decisions.**

(a) If a submitted claim involves \$50,000 or less, the Contracting Officer shall issue the decision within 60 days

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from actual receipt of the claim. If a submitted claim involves more than \$50,000, the Contracting Officer within 60 days from actual receipt shall either issue a decision or notify the Contractor of the date by which a decision shall be rendered, which shall be within a reasonable time. The Contracting Officer shall not be deemed to be in "actual receipt" of a claim until the claim meets all requirements of §1308.2(c).

(b) The Contracting Officer shall issue a decision within any time limits set by an order under §1308.24. If a Hearing Officer grants a stay of an appeal pursuant to §1308.25, the Contracting Officer shall issue a decision within any time limits specified by the stay order, or within a reasonable time after receipt of the stay, if it sets no time limits.

(c) As used in this subpart, the reasonableness of a time period depends on the amount or kind of relief involved and complexity of the issues raised, the adequacy of the Contractor's supporting data, contractual requirements for auditing of Contractor's cost or other data, and other relevant factors.

### **§ 1308.14 Request for relief by TVA.**

When TVA believes it is due relief under a contract, the Contracting Officer shall make a request for relief against the Contractor, and shall attempt to resolve the request by agreement. If agreement cannot be reached within a reasonable time, the Contracting Officer shall issue a decision which complies with the requirements of §1308.12(b).

### **§ 1308.15 Finality of decisions.**

A decision by a Contracting Officer under the disputes clause of a contract subject to this part is final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or suit is timely commenced under this part or section 10(a) (2) and (3) of the Act.

### **§ 1308.16 Decisions involving fraudulent claims.**

If a Contracting Officer denies any part of a Contractor's claim for lack of support, and the Contracting Officer is of the opinion that the Contractor's inability to support that part of the

claim is within §1308.6 and section 5 of the Act, the Contracting Officer's decision shall not state that opinion, but, contemporaneously with the decision, the Contracting Officer shall separately notify TVA's General Counsel of that opinion and the reasons therefor.

**§ 1308.17 Failure to render timely decision.**

Any failure by Contracting Officer to issue a decision on a submitted claim within the period required or permitted by §1308.13, will be deemed to be a decision by the Contracting Officer denying the claim and will authorize the commencement of an appeal on the claim under this part, or a suit on the claim as provided in section 10(a)(2) of the Act. If no appeal or suit pursuant to this section has been commenced at the time the Contracting Officer issues a decision, the right to sue or appeal and the time limits therefor shall be determined as otherwise provided in this part and the Act, and this section shall not authorize an appeal or suit from the decision.

**Subpart C—Board of Contract Appeals**

**§ 1308.21 Jurisdiction and organization.**

(a) The Board shall consider and determine timely appeals filed by Contractors from decisions of TVA Contracting Officers pursuant to a disputes clause.

(b) The Board shall consist of an indeterminate number of members, who shall serve on a part-time basis. The members of the Board shall all be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. One of the members of the Board shall be designated as "Chairman" pursuant to section 8(b)(2) of the Act.

(c) Each appeal or other matter before the Board shall normally be assigned to a single Hearing Officer, to be designated by the Chairman. The Chairman may act as a Hearing Officer, and shall notify the Contractor and TVA of the name and mailing address of the person designated as Hearing Officer.

(d) If a member to whom an appeal has been assigned cannot perform in a timely manner the duties of Hearing Officer, because of unavailability or incapacity which would in the Chairman's judgment affect the expeditious and timely resolution of the appeal, or for any other reason deemed sufficient by the Chairman, the Chairman may take any action deemed appropriate to effectuate the disposition of the appeal and the rights of the parties under this part. The kind of action taken, and the manner thereof, shall be within the discretion of the Chairman, and may include, but is not limited to, action on pending motions, discovery, issuance of or ruling on objections to subpoenas, and reassignment of an appeal in whole or in part.

**§ 1308.22 Representation.**

(a) In any appeal to the Board, a Contractor may be represented by an attorney at law duly licensed by any state, commonwealth, territory, or the District of Columbia. A Contractor not an individual and not wishing to appear by an attorney may be represented by any member, partner, or officer duly authorized to act on Contractor's behalf, or if an individual, may appear personally.

(b) TVA shall be represented by attorneys from its Office of General Counsel.

**§ 1308.23 Finality of decisions.**

A decision by a Hearing Officer on an appeal shall be the decision of the Board and shall be final, subject only to amendment under §1308.37(c), reconsideration under §1308.38 or appeal pursuant to sections 8(g)(2) and 10(b) of the Act.

**§ 1308.24 Undue delay in Contracting Officer's decision.**

(a) If there is an undue delay by a Contracting Officer in issuing a decision on a claim, the Contractor may request the Chairman to direct the Contracting Officer to issue a decision within a specified period of time.

(b) A request under this section shall:

(1) Be in writing;

(2) State the date on which the claim was submitted to the Contracting Officer.

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(3) State the date suggested for issuance of a decision by the Contracting Officer.

(c) TVA may reply to a motion under this section within 5 days after its receipt.

(d) The Chairman shall issue a written decision on the request. If granted, the decision shall specify the date by which the Contracting Officer's decision is to be rendered, and a copy shall be served on the Contracting Officer.

#### **§ 1308.25 Stay of appeal for Contracting Officer's decision.**

If an appeal has been taken because of a Contracting Officer's failure to render a timely decision, as provided by § 1308.17, the Hearing Officer, with or without a motion by a party, may stay proceedings on the appeal in order to obtain a decision on the matter appealed. Oral argument will not be heard on such a motion unless otherwise directed. The stay order will normally set a date certain by which the decision of the Contracting Officer will be rendered. Such date shall take into account the factors mentioned in § 1308.13(c), the length of time the matter has already been pending before the Contracting Officer, and the need for prompt and expeditious action on appeals.

#### **§ 1308.26 Appeals.**

(a) An appeal to the Board from a Contracting Officer's decision under § 1308.12 shall be initiated within 90 days from the Contractor's receipt of the Contracting Officer's decision and in the manner set forth in the disputes clause.

(b) An appeal from the Contracting Officer's failure to render a timely decision shall be taken within the time period provided by § 1308.17. The notice of appeal shall be in the form and filed in the manner specified in the disputes clause, but shall state that it is an appeal under § 1308.17, and shall include a copy of the claim which was submitted for decision.

#### **§ 1308.27 Appeal files.**

(a) Notices of appeal shall be filed as provided in the disputes clause, and shall be promptly transmitted by TVA to the Chairman.

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(b) Following transmittal of the notice of appeal, TVA shall assemble and transmit to the Hearing Officer and the Contractor an appeal file consisting of:

(1) The Contracting Officer's decision, if any, from which the appeal is taken;

(2) The contract and pertinent amendments, specifications, plans, and drawings (a list of the documents submitted may be provided Contractor in lieu of copies);

(3) The claim;

(4) Any other matter pertinent to the appeal submitted to or considered by the Contracting Officer for reaching a decision.

(c) The appeal file shall be submitted within 30 days. Within 30 days after receipt of a copy, the Contractor may submit to the Hearing Officer and TVA's General Counsel any documents within the scope of paragraph (b) of this section which are not included in the appeal file but which the Contractor believes are pertinent to the appeal. Such documents are considered a part of the appeal file.

### **Subpart D—Prehearing and Hearing Procedures**

#### **§ 1308.31 Filing and service.**

(a) All documents required to be served shall be served on TVA and Contractor and filed with the Board, except subpoenas.

(b) A request under § 1308.15 shall be directed to the General Manager, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, Tennessee 37902, and shall be transmitted to the Chairman.

(c) All other documents required to be filed shall be directed to the Hearing Officer assigned to the matter.

(d) Service on the opposing party may be made personally or by mail. The copy presented for filing shall bear an appropriate certificate or acknowledgment of service.

#### **§ 1308.32 Prehearing procedures.**

(a) Unless otherwise provided in this part, prehearing procedures, including discovery, shall be conducted in accordance with Rules 6, 7(b), 16, 26, 28-37, and 56 of the Federal Rules of Civil

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Procedure, except that the Hearing Officer may modify those Rules to meet the needs of the parties in a particular case.

(b) The term *court* as used in those Rules shall be deemed to mean "Hearing Officer"; the term *plaintiff* shall be deemed to mean "Contractor"; the term *defendant* shall be deemed to mean "TVA"; and the term *action* shall be deemed to mean the pending appeal.

(c) Discovery subpoenas are subject to Subpart E.

(d) The party giving notice of a deposition is responsible for securing a reporter.

(e) No appeal of counterclaim may be dismissed except by order of the Hearing Officer. The Hearing Officer may order at any time, with or without a motion by a party, that an appeal or counterclaim, or any part thereof, be dismissed because the matter has been settled, because the party no longer desires to pursue the matter, or because of the party's failure to prosecute the matter or to comply with the regulations in this part or with any order of the Hearing Officer. Any dismissal under this paragraph operates as an adjudication on the merits of the matter which is dismissed, and is a decision within the meaning of §1308.23, but does not affect the Hearing Officer's jurisdiction over any matter not so dismissed.

[44 FR 29648, May 22, 1979. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 3845, Jan. 31, 1984]

### § 1308.33 Hearings.

(a) TVA shall arrange for the verbatim reporting of evidentiary hearings before the Hearing Officer, and shall provide the Hearing Officer with the original transcript. The parties shall make their own arrangements with the reporter for copies.

(b) Admissibility of evidence shall generally be governed by the Federal Rules of Evidence, subject, however, to the Hearing Officer's discretion. As used in those Rules, the term *court* shall be deemed to mean "Hearing Officer."

(c)(1) Conduct of hearings shall generally be governed by Rules 42-44, 44.1, and 46 of the Federal Rules of Civil Procedure, except that the Hearing Of-

ficer may modify those Rules to meet the needs of the parties in a particular case. The terms *court*, *plaintiff*, *defendant*, and *action* as used in those Rules shall be deemed to have the meaning given them in §1308.32.

(2) After the Contractor has completed the presentation of his evidence, TVA, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the Contractor has shown no right to relief. The Hearing Officer as the trier of the facts may then determine them and render a decision against the Contractor, or take the matter under advisement, or decline to render any decision until the close of all the evidence. Any decision rendered under this paragraph shall conform to §1308.37, and is a decision within the meaning of §1308.23.

(d) Hearings shall be as informal as may be reasonable and appropriate under the circumstances, and shall be held at a time and place to be specified by the Hearing Officer.

(e) Evidentiary subpoenas are subject to Subpart E of this part.

[44 FR 29648, May 22, 1979. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 3845, Jan. 31, 1984]

### § 1308.34 Record on appeal.

Except as otherwise provided in this part, the appeal shall be decided on the basis of the record on appeal, which consists of the notice of appeal, the claim, any notice of election under §1308.35 or §1308.36, orders entered during the proceeding, admissions, transcripts of hearings, hearing exhibits and stipulations on file, all other documents admitted in evidence, and all briefs submitted by the parties.

### § 1308.35 Small claims procedure.

(a) The Contractor may elect to have the appeal processed under this section, if the amount in dispute is \$10,000 or less. This amount shall be determined by totalling the amounts claimed by TVA and Contractor.

(b) Appeals under this section shall be decided, whenever possible, within 120 days after the Hearing Officer receives written notice that the Contractor has elected to proceed under

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this section. Such election may be made a part of the notice of appeal.

(c) An appeal under this section shall be determined on the basis of the record on appeal and those documents in the appeal file identified in §1308.27(b)(1), (2), and (3). Other documents may be considered in the determination of the appeal as may be stipulated to by the parties, or as the Hearing Officer may order on motion by a party. No evidentiary hearing shall be held unless the Hearing Officer directs testimony on a particular issue. Discovery and other prehearing procedures may be conducted under such time periods as the Hearing Officer may set to meet the 120-day period, and the Hearing Officer may reserve up to 30 days to prepare a decision. Upon request by either party, the Hearing Officer shall hear oral argument after the record is closed, and may direct oral argument on specified issues if the parties do not request it.

(d) The Hearing Officer's decision under this section will be short and contain only summary findings of fact and conclusions of law. The decision may, at the Hearing Officer's discretion, be rendered orally at the conclusion of any oral argument held. In such case, the Hearing Officer will promptly furnish the parties a typed copy of the decision, which shall constitute the final decision.

(e) Decisions under this section shall be final and conclusive except for fraud, and shall have no value as precedent for future appeals.

#### **§ 1308.36 Accelerated appeal procedure.**

(a) The Contractor may elect to have the appeal processed under this section if the amount in dispute is \$50,000 or less. The amount shall be determined by totalling the amounts claimed by TVA and Contractor.

(b) Appeals under this section shall be decided, whenever possible, within 180 days after the Hearing Officer receives written notice that the Contractor has elected to proceed under this section. Such election may be made a part of the notice of appeal.

(c) In cases under this section, the parties are encouraged to limit discovery and briefing, consistent with

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adequate presentation of their positions. The Hearing Officer may shorten applicable time periods in order to meet the 180-day period, and may reserve 30 days to prepare a decision.

(d) The Hearing Officer's decision under this section will be short and may contain only summary findings of fact and conclusions of law. The decision may, at the Hearing Officer's election, be rendered orally at the conclusion of the evidentiary hearing, following such oral argument as may be permitted. In such case, the Hearing Officer will promptly furnish the parties a typed copy of the decision, which shall constitute the final decision.

#### **§ 1308.37 Decisions.**

(a) The Hearing Officer's decision shall be in writing. Except as provided by §1308.35 or 1308.36, the decision shall contain complete findings of fact and conclusions of law. The parties may be directed to submit proposed findings and conclusions. A decision against a Contractor on a claim shall include notice of the Contractor's rights under paragraphs (2) and (3) of section 10(a) of the Act.

(b) If the decision denies any part of a Contractor's claim for lack of support and the Hearing Officer is of the opinion that the Contractor's inability to support that part is within §1308.6 and section 5 of the Act, the decision shall not state that opinion, but contemporaneously with the decision the Hearing Officer shall separately notify TVA's General Counsel of that opinion and the reasons therefor.

(c) Not later than 10 days after receipt of the decision, a party may move to alter or amend the findings or make additional findings and amend the conclusions and decision accordingly. Such a motion may be combined with a motion under §1308.38. This time period cannot be extended.

#### **§ 1308.38 Reconsideration.**

Motions for reconsideration shall be served not later than 10 days after issuance of the Hearing Officer's decision. This time period cannot be extended. Such a motion shall be heard and decided in the manner provided by Rule 59 of the Federal Rules of Civil



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Procedure for motions for new trial in actions tried without a jury.

### § 1308.39 Briefs and motions.

(a) All motions shall be accompanied by a brief or memorandum setting forth supporting authorities. Briefs in opposition to a motion shall be served within 10 days after receipt of the motion, unless otherwise specified in this part, or by order of the Hearing Officer.

(b) The Hearing Officer shall set the schedule for service of prehearing and posthearing briefs on the merits.

(c) A motion to dismiss an appeal for lack of jurisdiction should be served seasonably, but may be served at any time. The issue of lack of jurisdiction may be raised by the Hearing Officer sua sponte, in which case the Hearing Officer shall set a briefing schedule on the issue in the document raising it to the parties.

(d) A motion for summary judgment may be made at any time after the appeal file has been transmitted under § 1308.26.

## Subpart E—Subpoenas

### § 1308.51 Form.

(a) A subpoena shall state the name of the Board and the title of the appeal; shall command the person to whom it is directed to attend and give testimony at a deposition or hearing, as appropriate, and, if appropriate, to produce specified books, papers, documents, or tangible things at a time and place therein specified; and shall notify the person of the right to request that the subpoena be quashed or modified and of the penalties for contumacy or failure to obey.

(b) [Reserved]

### § 1308.52 Issuance.

(a) A deposition subpoena shall not issue except upon the filing of a notice of deposition of the person to be subpoenaed, which notice should normally be filed at least 15 days in advance of the scheduled deposition.

(b) A subpoena for the attendance of a witness at an evidentiary hearing shall not issue except upon the filing of a request for appearance at the hearing of the person to be subpoenaed, which request should normally be filed at

least 30 days in advance of the scheduled hearing. The request should state:

(1) The name and address of the witness;

(2) The general scope of the witness' testimony;

(3) The books, records, papers, and other tangible things sought to be produced; and

(4) The general relevance of the matters sought to the case.

(c) Upon receipt of a notice of deposition or request for appearance at a hearing, the Hearing Officer shall fill in the name of the witness and sign and issue a subpoena otherwise in blank to the party seeking it, together with a duplicate for proof of service. The party requesting the subpoena shall fill in both copies before service.

(d) Letters rogatory may be issued by the Hearing Officer as provided in 28 U.S.C. 1781-1784.

### § 1308.53 Service.

A subpoena may be served at any place, and may be served by any individual not a party who is at least 18 years of age, or as otherwise provided by law. Service may be made by an attorney or employee of a party. Service shall be made by personal delivery of the subpoena to the individual named therein, together with tender of the amounts required by 5 U.S.C. 503 or other applicable law. The individual making service shall file with the Board the duplicate subpoena, filled out as served, with the return of service filled in, signed and notarized.

### § 1308.54 Requests to quash or modify.

The person served with a subpoena (or a party, if the person served is a party's employee) may request the Hearing Officer to quash or modify a subpoena. Such requests shall be made and determined in accordance with the time limits and principles of Rule 45(a), (b) and (d) of the Federal Rules of Civil Procedure.

### § 1308.55 Penalties.

In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the General

Counsel of TVA for an order requiring the person to appear before the Hearing Officer, to produce evidence or give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

## PART 1309—NONDISCRIMINATION WITH RESPECT TO AGE

Sec.

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- 1309.18 Under what circumstances must recipients take remedial or affirmative action?
- 1309.19 When may a complainant file a civil action?

AUTHORITY: TVA Act of 1933, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831-831dd (1976), and sec. 304 of the Age Discrimination Act of 1975, 89 Stat 729 (1975), as amended, 42 U.S.C. 6103 (1976).

SOURCE: 46 FR 30811, June 11, 1981, unless otherwise noted.

### § 1309.1 What are the defined terms in this part and what do they mean?

As used in this part the following terms have the stated meanings:

(a) *Act* means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* (Title III of Pub. L. 94-135).

(b) *Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) *Age distinction* means any action using age or an age-related term.

(e) *Age-related term* means a term which necessarily implies a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) *Financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement, by which TVA provides or otherwise makes available to a recipient assistance in any of the following forms:

- (1) Funds;
- (2) Services of TVA personnel;
- (3) Real and personal property or any interest in or use of property, including:
  - (i) Transfers or leases of property for less than fair market value or for reduced consideration; and
  - (ii) Proceeds from a subsequent transfer or lease of property if the share of its fair market value provided by TVA is not returned to TVA.

(g) For purposes of §§ 1309.6 and 1309.7, *normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or